

AO 257 (Rev. 6/78)

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: COMPLAINT INFORMATION INDICTMENT
 SUPERSEDING

- OFFENSE CHARGED

**Violation: 18 U.S.C. §§ 1341, 2-
Mail Fraud, Aiding and Abetting**

- Petty
 - Minor
 - Misdemeanor
 - Felony

PENALTY:

Maximum term of imprisonment 20 years, \$250,000 fine, 3 years supervised release, \$100 special assessment

PROCEEDING

Name of Complainant Agency, or Person (&Title, if any)
U.S. Department of Transportation, Office of Inspector General

person is awaiting trial in another Federal or State Court, give name of court

this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21 or 40. Show District

this is a reprocution of charges previously dismissed which were dismissed on motion of:

U.S. Att'y Defense

this prosecution relates to a pending case involving this same defendant

prior proceedings or appearance before U.S. Magistrate regarding this defendant were recorded un

**SHOW
DOCKET NO.**

MAGISTRATE
CASE NO.

**Name and Office of Person
Furnishing Information on
THIS FORM**

SCOTT N. SCHOOLS

U.S. Att'y Other U.S. Agency

Name of Asst. U.S. Att'y
(if assigned)

MAUREEN BESSETTE, AUSA

ADDITIONAL INFORMATION OR COMMENTS

PROCESS:

SUMMONS NO PROCESS*

If Summons, complete following:

Arraignment Initial Appearance

Defendant Address:

WARRANT Bail Amount:

**Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment*

Date/Time:

Before Judge:

Before Judge: _____

Comments:

1 SCOTT N. SCHOOLS (SC 9990)
United States Attorney

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11 RICHARD L. WALKING
12 CLERK OF THE DISTRICT COURT
13 SAN FRANCISCO, CALIFORNIA

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION

17 UNITED STATES OF AMERICA,

18 Plaintiff,

19 v.

20 THIEM VAN PHAN,

21 Defendant.

22 No. CR

23 CR07-0761

24 VIOLATIONS: 18 U.S.C. §§ 1341, 2 –
Mail Fraud, Aiding and Abetting

25 OAKLAND VENUE

26 INFORMATION

27 The United States Attorney charges:

28 I. BACKGROUND

At all times material to this Information,

1. From at least 1992, Amland Corp. (aka Amland and Amland Construction) (“Amland”), a California corporation, was a landscaping and construction company. From approximately January 2006 through the present, Amland was located at 1401 Felipe Avenue, San Jose, California. Prior to this, from approximately 2003 through approximately January 2006, the business office was located at 9926 Gibraltar Road, Oakland, California. In December 2000, Amland entered into contracts with the U.S. Department of Transportation Federal Highway Administration (“DOT FHWA”), and the State of California Department of Transportation (“Caltrans”) to perform construction and landscaping work on federally funded highway construction projects in

the State of California.

2. From at least 2001, THIEM VAN PHAN ("PHAN") was an employee at
Amland responsible for the bookkeeping and payroll. In this position, PHAN generated
employee paychecks based on weekly time sheets.

3. The United States Department of Transportation, through the Federal Highway
Administration, funds highway construction projects throughout the United States. In
California, such federal funds are administered by Caltrans, which solicits and accept bids
from contractors. As a condition of such contracts, prime contractors and subcontractors,
such as Amland, agree to comply with federal and/or state requirements that apply to
projects paid for by federal funds. Among these requirements is that the contractor pay
its employees (1) on a weekly basis and (2) the prevailing federal wage rate. Contractors
accepting such public road construction contracts also agree to submit certified payroll
reports for review by Caltrans and to certify that the contractor has complied with federal
and/or state requirements regarding compensating its employees.

4. From approximately December 2000 through September 2004, Amland entered
into five contracts with the DOT FHWA and Caltrans, to perform work on federal-aid
funded highway construction projects. Amland was the contractor on five contracts.
These Amland contracts each involved more than \$2,000, triggering application of 40
U.S.C. § 3142 (Rate of wages for laborers and mechanics).

COUNT ONE: (18 U.S.C. §§ 1341, 2 - Mail Fraud and Aiding and Abetting)

SCHEME TO DEFRAUD

5. Paragraphs 1 through 4 are incorporated herein by reference.

6. Beginning in approximately November 2001 and continuing through October
2006, in the Northern District of California, and elsewhere, the defendant,

THIEM VAN PHAN,

did knowingly devise and intend to devise a material scheme and artifice to defraud
Amland employees, to obtain money by means of material false and fraudulent pretenses,
representations, and promises, and by material omissions as follows.

7. It was part of the scheme and artifice to defraud that defendant would and did

1 submit false certified payroll reports and certified statements of compliance that
2 misrepresented to Caltrans the amount and frequency of payments made by Amland to its
3 employees. These certified payroll reports and certified statements of compliance
4 purported to show that Amland employees working on the Amland contracts were paid
5 once each week and received the federally mandated prevailing wage rate, when in fact
6 these employees were not paid each week and did not receive the prevailing wage rate
7 because defendant PHAN took certain paychecks meant for Amland employees and
8 cashed the checks for his own personal enrichment.

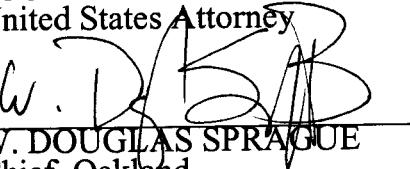
9 USE OF THE MAIL

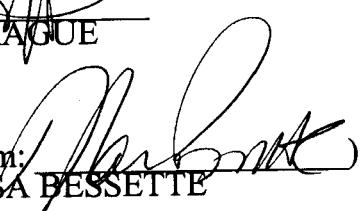
10 8. On or about February 2, 2005, in the Northern District of California and
11 elsewhere, for the purpose of executing the aforementioned scheme and artifice to
12 defraud, and attempting to do so, the defendant,

13 THIEM VAN PHAN,
14 did knowingly cause to be placed in a post office and authorized depository for mail
15 matter to be sent and delivered by the Postal Service, a false certified statement of
16 compliance and a false payroll report, from Amland in San Jose, California to 21030
17 Redwood Road, Castro Valley, California, 94544, all in violation of Title 18, United
18 States Code, Sections 1341 and 2.

19 Dated:

20
21 SCOTT N. SCHOOLS
22 United States Attorney

23 
24 W. DOUGLAS SPRAGUE
25 Chief, Oakland

26 (Approved as to form:
27 
28 AUSA BESETTE